

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42138

HORRY COUNTY, S.C., MARION COUNTY, S.C., COLUMBUS COUNTY, N.C., CITY OF CONWAY, S.C., TOWN OF FAIR BLUFF, N.C., TOWN OF CHADBOURN, N.C., TOWN OF TABOR CITY, N.C., CITY OF WHITEVILLE, N.C., AND METGLASS, INC.

v.

THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY, D.B.A. CAROLINA SOUTHERN RAILROAD COMPANY

Decided: November 25, 2013

On August 27, 2013, Horry County, S.C., Marion County, S.C., Columbus County, N.C., City of Conway, S.C., Town of Fair Bluff, N.C., Town of Chadbourn, N.C., Town of Tabor City, N.C., City of Whiteville, N.C., and Metglass, Inc. (collectively, Complainants) filed a complaint alleging that the Baltimore and Annapolis Railroad Company, d.b.a. Carolina Southern Railroad Company (CALA), is failing and refusing to provide rail transportation upon reasonable request in violation of 49 U.S.C. § 11101(a). In addition, Complainants allege that CALA has unlawfully abandoned its rail lines in violation of 49 U.S.C. § 10903(d). CALA filed an answer to the complaint on September 24, 2013.

*Procedural Schedule.* In separate submissions filed November 12, 2013, Complainants and CALA indicate that, pursuant to 49 C.F.R. § 1111.10(a), the parties conferred by telephone to discuss discovery and procedural matters. However, the parties stated that they were unable to reach an agreement and have submitted separate proposed procedural schedules.<sup>1</sup>

Complainants propose a schedule that would allow parties 15 days to submit discovery requests after the filing of their procedural report (by November 27, 2013); 15 days for parties to respond to discovery; 30 days for Complainants to submit their opening statement; 30 days for CALA to file its reply; and 15 days for Complainants to file their rebuttal.

CALA proposes a schedule that would allow parties 30 days to submit discovery requests after the Board approves the procedural schedule; 45 days for parties to respond to discovery; 90 days for Complainants to submit their opening statement; 90 days for CALA to file its reply; and 30 days for Complainants to file their rebuttal. CALA states that it is exploring options to restore rail service on the subject rail lines and thus requests more time than proposed by Complainants.

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<sup>1</sup> On October 23, 2013, the Board granted Complainants' and CALA's joint request to extend the due date for the proposed procedural schedule to November 12, 2013.

Complainants' proposed procedural schedule will be adopted but modified to allow additional time for parties to respond to discovery requests. CALA has not shown why its proposed longer schedule is needed for the purposes of discovery and submission of evidence. Rather, it requests more time for the separate effort of repairing or selling the lines at issue.<sup>2</sup> Such efforts, however, do not justify postponing or lengthening the procedural schedule as CALA proposes. Complainants' proposed procedural schedule, as modified, is reasonable and provides adequate time for parties to complete discovery and submit evidence. Therefore, the following procedural schedule will govern this proceeding:<sup>3</sup>

December 10, 2013	Discovery requests due
January 9, 2014	Responses to discovery due
February 10, 2014	Complainants' opening evidence due
March 10, 2014	CALA's reply evidence due
March 25, 2014	Complainants' rebuttal evidence due

*Petition to Intervene.* On September 12, 2013, BP Amoco Chemical Company (BP) filed a petition for leave to intervene in support of Complainants. BP seeks a ruling from the Board that CALA has not complied with its obligations to provide rail transportation and storage services. BP states that Complainants and CALA authorized BP to state that they did not intend to oppose the granting of the petition.<sup>4</sup> Accordingly, BP's petition to intervene will be granted.

It is ordered:

1. The parties shall comply with the procedural schedule set forth in this decision.
2. BP Amoco Chemical Company's petition to intervene is granted.

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<sup>2</sup> In its reply to BP Amoco Chemical Company's petition to intervene, discussed below, CALA similarly has requested that the Board postpone this proceeding so that it has a reasonable amount of time to exhaust efforts to sell or repair the lines at issue.

<sup>3</sup> Complainants' deadlines in the procedural schedule also apply to parties intervening in support of Complainants.

<sup>4</sup> On October 17, 2013, CALA replied to BP's petition, contesting BP's allegations on the merits but not objecting to BP's intervention. BP's claims will be addressed in a final decision on the merits.

3. This decision is effective on the date of service.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.